1	Gregory M. Fox, State Bar No. 070876 Meaghan A. Snyder, State Bar No. 279392			
2	BERTRAND, FOX & ELLIOT The Waterfront Building 2749 Hyde Street San Francisco, California 94109 Telephone: (415) 353-0999 Facsimile: (415) 353-0990 Attorneys for Defendants			
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6	CITY OF SUNNYVALE, CHRIS SEARLE and DARREN PANG			
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8	LINITED STATES DISTRICT COLIDT			
9	UNITED STATES DISTRICT COURT			
10	NORTHERN DISTRICT OF CALIFORNIA			
11	ERIKA CANAS, JOSE CANAS, a minor, by and through his guardian ad litem, and JESUS	Case No. 3:08-cv-057	771-TEH	
12	CANAS, by and through his guardian ad litem,	DEFENDANTS' MOTION IN LIMINE TO EXCLUDE TESTIMONY OF THE COLORS WORN BY DEFENDANT OFFICERS		
13	Plaintiffs,			
14	v.	(DEFENDANTS' M	IOTION IN LIMINE NO. 6)	
15	CITY OF SUNNYVALE, CHRIS SEARLE, DARREN PANG and DOES ONE through		ŕ	
16	TWENTY FIVE,	Pretrial Conference: Time:	3:00 p.m.	
17	Defendants.	Location:	Courtroom 2, 17th Floor	
18		Trial: September 11, 2012		
19	Hon. Thelton E. Henderson			
20	I. INTRODUCTION			
21	Defendants Chris Searle, Darren Pang, and the City of Sunnyvale hereby move this Court in			
22	limine for an Order excluding any and all testimony, reference to testimony, or argument relating to the			
23	defendant officers wearing gang colors on September 12, 2007.			
24	II.	ARGUMENT		
25	A. <u>Evidence at Issue</u>			
26	Plaintiffs included in the joint pretrial conference statement in their statement about the substance			
27	of the action that the defendant officers were wearing blue vests and that this is significant because ther			
28	is heavy gang activity in the area where the incident occurred and blue is a prominent gang color			
- 1				

Defendants anticipate that plaintiffs will elicit testimony and/or argue that the decedent believed the officers to be members of a rival gang and thus tried to flee in his car.

B. Evidence and Argument about the Defendant Officers Wearing Gang Colors is Irrelevant and Prejudicial

Evidence which is not relevant is not admissible. FRE 402. To be relevant, the proffered evidence must have a tendency to prove or disprove some fact that is of consequence in this action. FRE 401. Plaintiffs should not be able to put on testimony or argument that the defendant officers were wearing gang colors on the day of the incident. This evidence is irrelevant to the causes of action in this case. What the decedent may have thought when the detectives approached his car is not only completely speculative, it is not relevant to the issue of whether the officers used reasonable force. The only relevant issue is what Detective Pang knew at the time he made his decision to use deadly force. *See Graham v. Conner*, 490 U.S. 386, 396-97 (1989).

Even if this court finds that the evidence is somehow relevant to the issues at hand, it should be excluded because it is more prejudicial than probative. FRE 403. The evidence would be offered to influence the jury to believe that the decedent Jose Canas thought the police were members of a gang and this caused him to try and flee in his car. This evidence is purely speculative and would be highly prejudicial to the defendants while having little probative value. There is no available evidence regarding what Jose Canas believed when he saw defendant officers, and certainly there is no way of knowing whether Decedent believed the officers were members of a rival gang. Therefore, any testimony or argument about this should be excluded because it is purely speculative, irrelevant and highly prejudicial with little or no probative value, and any such testimony or argument would serve only to mislead the jury.

C. The Gang that the Decedent was a Member of Wore the Same Colors as the Defendant Officers

Plaintiffs' potential argument that the Decedent Jose Canas believed the defendant officers were members of a rival gang is contradicted by the fact that the colors the officers were were the same colors as those worn by Mara Salvatrucha, the gang to which Jose Canas belonged. See, Exhibit A, photographs of Detectives Pang and Searle taken shortly after the incident. Members of the Mara

Salvatrucha gang wear blue, black, and white. See, for example: http://www.gangsorus.com/ms_13.html, attached hereto as Exhibit B. Any argument that Jose Canas believed the defendant officers to be members of a rival gang is not only highly speculative and irrelevant to the issue of whether Detective Pang's decision to use deadly force was reasonable, but is also discredited by the fact that the colors that the officers were wearing were the same colors as those worn by members of Mara Salvatrucha.

D. <u>Plaintiffs' Expert Has Offered No Opinion Regarding Gang Colors</u>

The FRCP Rule 26 expert statement of plaintiffs' police practices expert, Roger Clark, makes no mention of any theory regarding gang colors and Decedent's supposed perceptions or actions. Thus, plaintiffs have not established sufficient preliminary facts that certain colors are associated with a particular gang, and that particular colors would have any significance to Decedent. FRE 702. Plaintiffs should not be permitted to testify regarding an argument not disclosed through and supported by expert testimony.

III. CONCLUSION

Defendants therefore respectfully request an order *in limine* to exclude testimony and argument regarding the defendant officers wearing gang colors on the day of the incident.

Dated: August 21, 2012

BERTRAND, FOX & ELLIOT

By: <u>/s/ Meaghan A. Snyder</u>

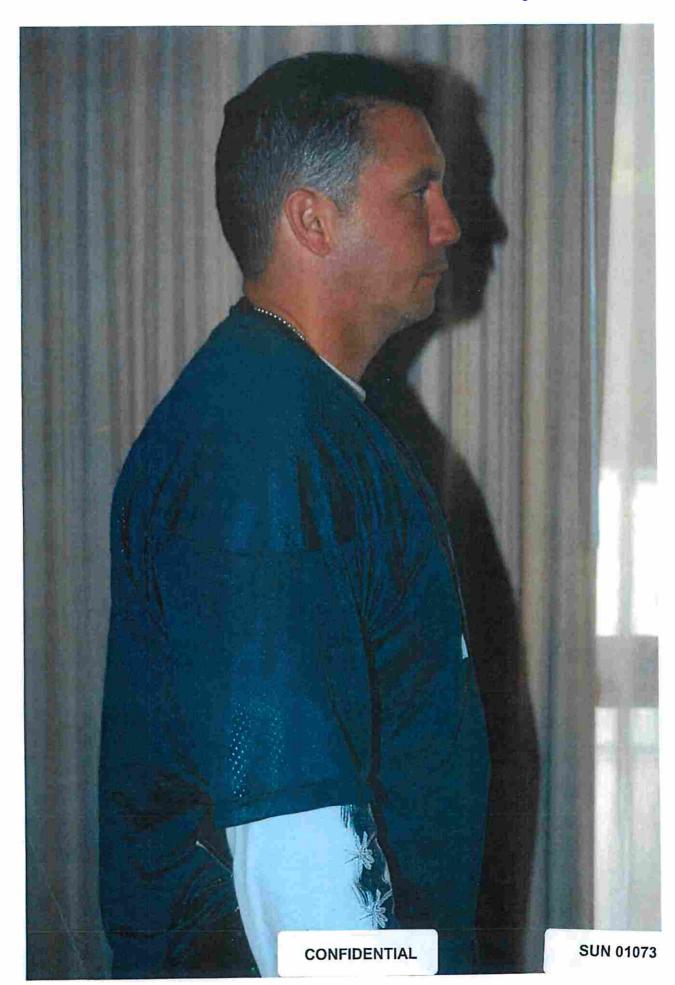
Gregory M. Fox Meaghan A. Snyder Attorneys for Defendants CITY OF SUNNYVALE.

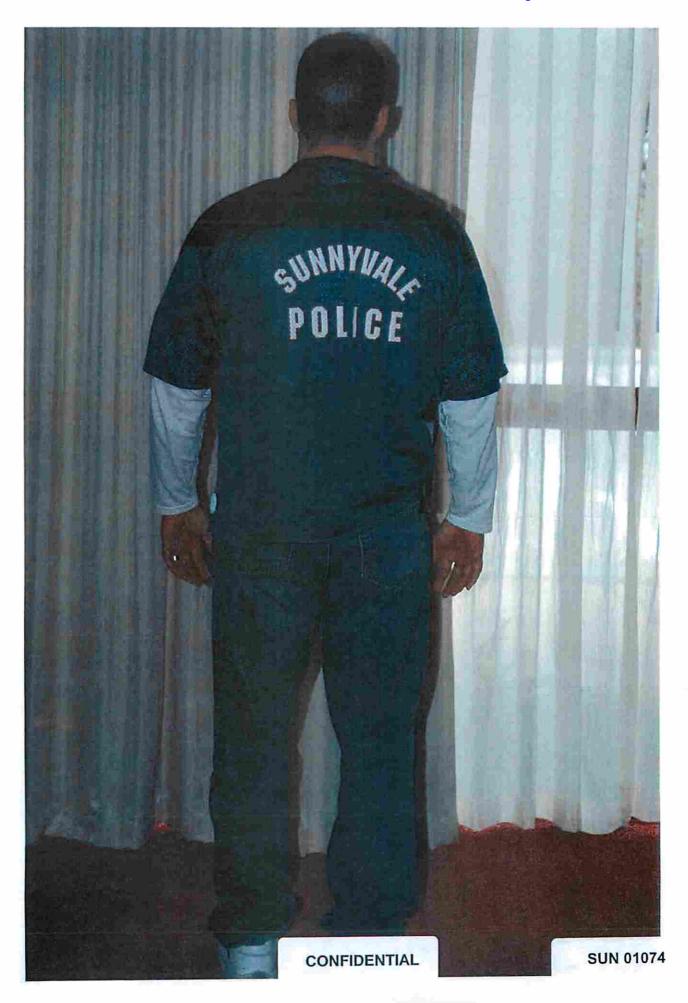
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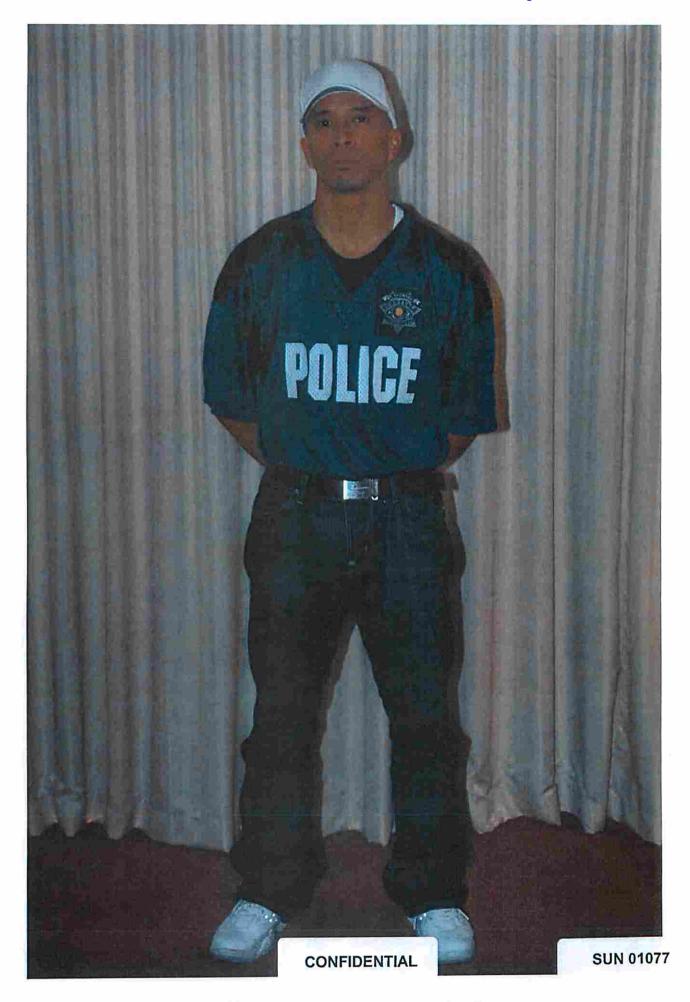
DARREN PANG

EXHIBIT A

EXHIBIT A







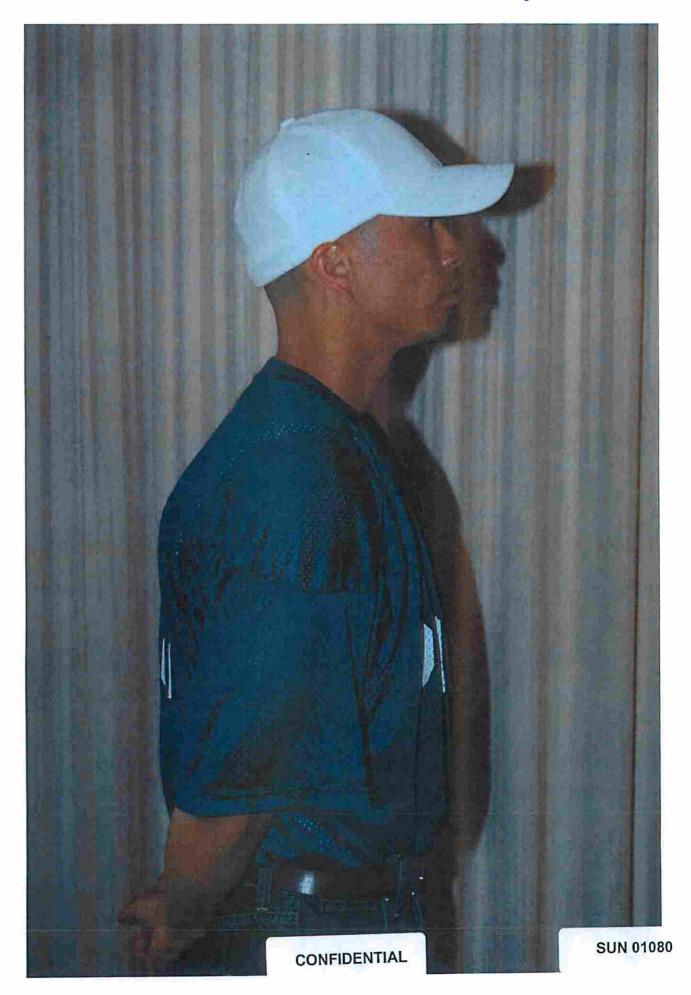


EXHIBIT B

EXHIBIT B

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Cangs

Mara Salvatrucha - MS-13

Two predominantly Hispanic street gangs—18th Street and Mara Salvatrucha, both transnational gangs, began to proliferate in Los Angeles during the 1960s and 1980's and now, according to estimates, have fraternal links to some 130,000 to 300,000 members in Mexico and Central America as well as reaching out across the United States from Southern California to major cities and rural communities on the Eastern Seaboard.

FBI Update - 01/14/08 - MS-13 operates in at least 42 states and the District of Columbia and has about 6,000-10,000 members nationwide and is described as "America's Most Dangerous Gang."

Mara Salvatrucha - "Mara" is a Salvadoran word for gang, and "Salvatrucha" means Salvadoran guy.

History and Origin - Many Salvadoran refugees fled the U.S.-backed civil war against insurgents in El Salvador during the 1980's and relocated in the Rampart area of Los Angeles, California. As with any gang, there are several versions as to how the gang formed. The first version states that the Salvadoran youths, after arriving in Los Angeles were accepted by the existing Hispanic gangs, particularly the 18th Street Gang. Supposedly, these juveniles were widely accepted by the gangs because of the combat experience they had received during the civil war in El Salvador. Soon, differences arose and the Salvadorans broke from the pre-existing gangs to begin forming Mara Salvatrucha cliques on their own.

A second version of the Mara Salvatrucha origin states that after relocating in the Rampart area of Los Angeles, the youths became targets of the already established Hispanic gangs and for their own self protection and the protection of their families, they formed the gang.

Cliques and members – Since there are no "precise" statistics, it is difficult to estimate number of cliques or the number of members. It has been estimated that MS-13 has over 15,000 members and associates in at least 115 different cliques in 33 states, and these numbers are continually increasing. The areas with the greatest concentration are Southern California, with 20 different cliques and over 4,400 members and associates; New York City, with 24 cliques and over 1,700 members and associates; and the Northern Virginia/Metropolitan D.C. area, with 21 cliques and a total of more than 5,000 members and associates.

Sources also indicate a strong presence of Mara Salvatrucha in the states of Alaska, Arkansas, Florida, Georgia, Illinois, Maryland, Michigan, Nevada, New Jersey, North Carolina, Oklahoma, Oregon, Rhode Island, Texas and Utah.

Foreign countries, where they are known to exist, include, Canada, Guatemala, Honduras, Mexico and El Salvador. It is estimated that there are over 250,000 Mara Salvatrucha members in Central America.

Identifiers – Mara Salvatrucha is also known as Mara Salvatrucha 13, MS 13, and MS XII. They consider the number "13" to be lucky and it also shows an alliance with Southern California Hispanic gangs. The number "13" is a reference to the thirteenth letter of the alphabet which is "M." "M" is synonymous with La Eme or the Mexican Mafia. The Mexican Mafia is a prison gang but according to law enforcement sources, controls many Southern California Hispanic gangs. As further evidence of the MS alignment with Southern California, they may also use the terms Sureño, Sureño 13, Sur or Sur 13. "Sureño" is Spanish for "southern" while "sur" means "south."



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MS members have been known to tattoo MS related symbols on much of their body, head to toe. Gang members may

carry a bandana (typically blue, but sometimes black) around with them and may wear it around their wrist, neck, forehead, or pocket. MS-13 members like to wear sports clothing that displays strategic numbers like 13, 23, or 3. They also wear jerseys that show the gang colors of blue or black. They are also known to wear white. Some of their favorite jerseys are those of sports ligures Alien Iverson (blue 3) and Kurt Warner (Blue 13). Members also will wear Nike Air Jordan hats with the Air Jordan logo resembling their hand sign. New York Yankees apparel is also a favorite of MS-13 members. It is important to note that many young people wear these colors and sport clothing and these indicators alone should not be viewed as evidence of gang membership.

The rapid proliferation of the Mara Salvatrucha to many parts of the United

States has not gone unnoticed. The entire gang is on the verge of
becoming the first gang to be categorized as an "organized crime" entity. The MS seen to thrive on violence and in my

opinion, they are determined to spread fear everywhere they can obtain a base of operations.

MS-13 - A National Geographic Documentary

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Save 50% Off Gear Today Outdoor Daily Deals

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GEARHOG.com - Group Daily Deals

Police Equipment

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Magpul Accessories

Ammunition at Brownells

EBI Salary

Handgun Quiz

Reloading

The Concealed Carry Quiz

More Background

The following link actually contains a series of Tinks. The initial pictures are a side show with narration. Click on the "Photo Gallery" to begin the sides.

To view the videos beneath the MS-13 photo, click the title that you wish to view.

. MS-13: The National Threat

A National Assessment

. FBI: The MS-13 Threat

MS-13 Videos

- MS 13 Report
- MS 13 America's Most Dangerous Gang Part 1
- . MS 13 America's Most Dangerous Gang Part 2
- MS-13: Violence in El Salvador

MS Links

- MS 13 Background
- Mara Salvatrucha
- . For Gangs, Tattoos Out; College Look In
- · Mara Salvatrucha 13 Slide show with Hispanic rap
- · More Mara Salvatrucha with rap

La Sombra Negra - An Anti-MS-13 Vigilante Group

La Sombra Negra

Mara Salvatrucha In The News

Nicaraguan police hand over MS-13 boss to Interpol in Managua Albuquerque PD: New, violent gang in New Mexico